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NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEAL M. GOLDBERG
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November 9, 1992

ORIGINAL
FILE

HAND DELIVERED

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Amendment of the Commission's Rules to Establish New
Personal Communications Services, GEN Docket No. 90-314, ET Docket
No. 92-100

Dear Ms. Searcy:

Enclosed please find an original and six (6) copies of the Comments of Tandy Corporation in the above-captioned proceeding. Please date stamp the extra copy and return it to our messenger.

Sincerely,



Neal M. Goldberg

Enclosures

RECEIVED

NOV - 9 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

)	GEN Docket No. 90-314
)	ET Docket No. 92-100
In the Matter of)	
)	RM-7140, RM-7175, RM-7617,
Amendment of the Commission's)	RM-7618, RM-7760, RM-7782,
Rules to Establish New Personal)	RM-7860, RM-7977, RM-7978,
Communications Services)	RM-7979, RM-7980
)	
)	PP-35 through PP-40, PP-79
)	through PP-85

To: The Commission

COMMENTS OF TANDY CORPORATION

Tandy Corporation ("Tandy"), by its attorneys and pursuant to the Commission's Notice of Proposed Rule Making and Tentative Decision ("NPRM") released August 14, 1992, respectfully submits its Comments in the above-captioned matter.

I. INTRODUCTION

In 1990, the Commission released a Notice of Inquiry¹ ("NOI") in response to petitions for rulemaking to allocate spectrum for implementation of personal communications services (PCS). In response to that Notice, Tandy filed comments urging the Commission to encourage the development and implementation of Personal Communications Services. In addition, Tandy

¹ See Notice of Inquiry GEN Dkt. No. 90-314, FCC 90-232, released June 29, 1990.

supported Apple Computer, Inc.'s request for a rulemaking to establish Data-PCS.² In the above-captioned NPRM, the Commission has merged the Data-PCS proceeding with the proceeding which was the subject of the Notice of Inquiry addressing PCS in general. In these comments, Tandy continues to support the expeditious implementation of PCS. However, Tandy reiterates its concerns that an appropriate regulatory framework is necessary for PCS if a fully competitive PCS marketplace is to be achieved.

Tandy manufactures and sells a variety of telecommunications, electronics, and computer products, including pagers, cellular telephones, cordless telephones, and portable computers. Through more than 7,000 Radio Shack stores, Tandy Computer Centers and other affiliated stores, Tandy is the world's largest retail distributor of consumer electronics products. Tandy expects to play a leading role in manufacturing and providing equipment used for PCS and related services once such new services are authorized. Because decisions made in this proceeding will significantly affect the marketplace for PCS and equipment necessary to provide PCS, Tandy has a significant interest in this proceeding.

II. THE COMMISSION SHOULD TAKE STEPS TO ENSURE A COMPETITIVE PCS MARKET

In order to secure the full benefits of a competitive marketplace for PCS, the Commission not only should take the salutary steps proposed in the

² See Petition for Rulemaking filed by Apple Computer, Inc. Amendment of Section 2.106 of the Commission's Rules to Establish a New Radio Service for local Area High Speed Data Communications Among Personal Computing Devices, RM-7618 (January 28, 1991).

NPRM, but expand on those proposals in a number of ways. In these comments Tandy urges the Commission to ensure that the market for PCS is competitive by going beyond the minimum steps it has proposed. As discussed below, the Commission can help ensure that the PCS market is fully competitive by prohibiting bundling of PCS service and equipment, allowing for the maximum number of service providers to be authorized in each market, and prohibiting cellular licensees and local exchange carriers from providing PCS within their own service areas.

A. The Commission Should Prohibit the Bundling of PCS Equipment and PCS Services

The bundling of equipment and regulated service can have distinct anticompetitive effects. The Commission has recognized as much by embodying an anti-bundling policy in its common carrier rules. See 47 C.F.R. § 64.702(e). Nonetheless, despite the fact that Tandy raised this point in the NOI phase of this proceeding, in the NPRM, the Commission did not address the problems inherent in the bundling of PCS service and equipment nor did it invite comment on the bundling issue. If it is to remain true to its goal of providing the maximum amount of competition in the PCS marketplace consistent with the public interest, the Commission should address the bundling issue and proscribe the bundling of PCS services and equipment.

Allowing bundling of equipment and services would permit PCS providers to limit competition. Bundling has a significant adverse effect on competition by putting those equipment vendors which are not also service providers at a distinct disadvantage. Bundling would allow service providers

to offer PCS equipment free or well below cost to customers who in turn will be required to subscribe to their service for a specified period of time. Such a practice violates Commission policy by using discounts on an unregulated product such as equipment to sell regulated and exclusive carrier service. See ITT World Communications, Inc., 51 RR2d 1386, 1390 (1982).

Unlike the case with independent equipment providers such as Tandy, a PCS service provider with few (if any) competitors can recover the cost of its equipment by charging inflated prices for its service. This conduct would harm not only those equipment providers, such as Tandy, who might not also provide PCS service, but also resellers of PCS services and the PCS customers as well. As a result of bundling, resellers and equipment providers could be excluded from the marketplace while the carrier's customers become captives of that carrier because their PCS equipment may well function only with that provider's offerings. Once the customers became committed to a particular service provider, that service provider can then raise the prices to compensate for the low equipment prices.

The Commission has recently held that the bundling of cellular service and equipment does not violate FCC rules or policy given the peculiar characteristics of the cellular market. Report and Order, CC Docket No. 91-34, FCC 92-207, released June 10, 1992. While Tandy disagrees with the Commission's conclusion in that case, and notes that that decision is on reconsideration, that decision should have little bearing on the PCS market. PCS is an emerging industry and requires anti-bundling rules to enable it to develop into a competitive industry for service and equipment. At some point

in the future, if the PCS industry is deemed workably competitive, there will be time enough to revisit a bundling prohibition. Without such a prohibition, however, there may never come a time when the PCS industry lives up to the hopes many have for it. Because of the harmful effects bundling will have on competition in the PCS marketplace, Tandy respectfully requests that the Commission adopt rules which prohibit bundling of PCS equipment and services.

B. **The Commission Should Authorize as Many Service Providers as the Marketplace Will Accommodate**

The Commission recognizes the benefits of authorizing multiple service providers in each PCS service area and has tentatively concluded that it would allocate spectrum to support a minimum of three PCS providers in each market. NPRM at ¶ 34. Tandy agrees that full competition in the PCS market will only be achieved through licensing multiple service providers. Competition among service providers will facilitate innovation as well as reduced prices. Accordingly, if the marketplace can accommodate more than the three providers proposed in the NPRM, Tandy would encourage the Commission to authorize more than three service providers in a market.

The proposed three-carrier-per-market regime may well not be sufficient to foster competition. The duopoly licensing system in the cellular industry has not resulted in adequate competition, and there is no indication three providers per market will achieve a fully competitive PCS market, particularly if bundling is not prohibited. Even with three service providers,

anticompetitive practices are a possibility and could lead to inefficient pricing of the service.

The public interest requires that the Commission authorize as many service providers in each market as the market is able to support. In the absence of sound technical, economic or other reasons to limit the number of providers, Tandy urges the Commission to authorize a minimum of four service providers in each PCS service area.

C. The Commission Should Prohibit Local Exchange Carriers and Cellular Service Providers from Holding PCS Licenses within their Service Areas

The Commission has proposed that cellular service providers be permitted to obtain PCS licenses outside of their service areas, but has requested comment on whether cellular providers should be permitted to obtain PCS licenses within their service areas. NPRM at ¶ 67. In addition, the Commission has tentatively concluded that it should permit local exchange carriers ("LECs") to obtain PCS licenses within their service areas. NPRM at ¶ 75. In order to better ensure a competitive marketplace, Tandy believes that cellular licensees and LECs should, at a minimum, be prohibited from applying for PCS licenses in their own service areas.

The Commission should not permit cellular service providers to obtain PCS licenses within their service areas. If they were permitted to operate PCS facilities in their cellular markets, cellular licensees would benefit from a substantial competitive advantage in those markets. In addition, because PCS may well be a major competitor of cellular services, cellular licensees will not have the incentive to develop PCS technology to the maximum extent

possible or to provide an innovative service which has the potential of harming their cellular interests.

Tandy believes this problem is significant enough to justify a rule prohibiting cellular carriers from holding PCS licenses anywhere. However, because the potential for such anticompetitive conduct is most apparent in their own cellular markets, Tandy believes adoption of a rule prohibiting cellular carriers from providing PCS in their own cellular markets is a minimum requirement to ensure a competitive PCS market.

For similar reasons, LECs should not be permitted to obtain PCS licenses within their service areas. Contrary to the Commission's tentative conclusions, the potential benefits derived from LECs' provision of PCS within their service areas do not outweigh the adverse effect such a regime would have on competition. LECs are likely to cross subsidize the PCS service with the revenues from their exchange service. Consequently, prices charged to subscribers for the LECs' PCS service would not reflect market prices. In addition, LECs have the capability of discriminating against other PCS providers in limiting access to wireline facilities.

The Commission has acknowledged the potential that PCS has to become competitive with local wireline exchange service. NPRM at ¶ 71. To that end, the LECs, like cellular service providers, would lack the incentive to develop and implement advanced PCS technology if such a course of action would be detrimental to their own local exchange service. For these reasons, Tandy urges the Commission, at a minimum, to prohibit LECs and cellular service providers from acquiring PCS licenses in their own service areas.

III. THE COMMISSION SHOULD ENCOURAGE THE
DEVELOPMENT OF DATA-PCS

In its Petition for Rulemaking Apple suggested that the Commission allow the introduction of Data-PCS on an unlicensed basis. Tandy supported the essential elements of the Apple Petition. The Commission has tentatively concluded that "permitting the use of PCS devices on an unlicensed basis would be in the public interest." NPRM at ¶ 42. Tandy continues to support Apple's proposal to the extent that it proposes a regulatory framework for Data-PCS modeled after the Commission's Part 15 Rules. Under that scenario, there would be no licensing requirements for service providers or individual users of Data-PCS. Tandy urges swift adoption and implementation of the Commission's Data-PCS proposals.

IV. CONCLUSION

For the reasons stated above, Tandy supports the Commission's efforts to implement a Personal Communications Service and is encouraged by the FCC's recognition that only through a competitive marketplace will PCS achieve its full potential. Consistent with these Commission goals, Tandy urges the Commission to also consider proposals other than those it has included in its NPRM to ensure a fully competitive PCS marketplace. To this end the Commission should (1) prohibit the bundling of PCS equipment and service; (2) authorize as many PCS service providers in a market as that market will accommodate; and (3) prohibit cellular carriers and LECs from holding PCS licenses in their service areas.

Respectfully submitted,



John W. Pettit
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Christina J. Funderburk

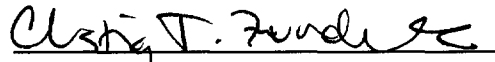
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November 9, 1992

Counsel for Tandy Corporation

CERTIFICATE OF SERVICE

I, Christina J. Funderburk, hereby certify that a copy of the foregoing Comments of Tandy Corporation were mailed, postage prepaid, this 9th day of November, 1992, to the following parties.


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